Precision Insulation Service Co. *and* International Association of Heat & Frost Insulators & Asbestos Workers Local Union 22, AFL–CIO. Cases 16–CA–17153 and 16–CA–17376

October 12, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND TRUESDALE

Upon charges and an amended charge filed by the Union on January 18, May 9, and May 12, 1995, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on June 5, 1995, against Precision Insulation Service Co., the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Although properly served copies of the charges, amended charge, and complaint, the Respondent failed to file an answer.

On July 31, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On August 3, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 19, 1995, notified the Respondent that unless an answer were received by July 24, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Texas corporation with an office and place of business in Houston, Texas, has been engaged in the construction industry as an insulation contractor. During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations, purchased and received at its Houston, Texas facility goods valued in excess of $50,000 from other enterprises, including Gowan, Inc., located within the State of Texas, each of which other enterprises had received these goods directly from points outside the State of Texas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About December 14, 1994, the Respondent, at its Platzar Shipyard jobsite, interrogated an employee concerning his union activities, threatened an employee that if the Union was selected as the bargaining representative, the Respondent would never sign a union contract with the Union, and threatened an employee with discharge by telling him that if the employees engaged in union activities, the Respondent would put them on 1-day jobs, and then put completed on their termination slips.

About mid-December 1994, the Respondent, at its Texas Orthopedic jobsite, orally promulgated, and since that date has maintained and enforced, a rule prohibiting employees from discussing the Union on the job to discourage employees from forming, joining and assisting the Union or engaging in other concerted activities. About December 1994, the Respondent, at the same jobsite, told an employee not to talk union on the job or he would have to fire him. About late December 1994, the Respondent, at the same jobsite, told an employee to tell the employee's son to stop talking union on the job.

About December 19, 1994, the Respondent, at its office, interrogated an employee concerning his union membership and activities; threatened an employee that if the employees selected the Union as their bargaining representative, the Respondent would close its shop; promised an employee benefits, including a 401(k) plan, if the employee would abandon the Union; and granted bonuses and raises to certain employees in order to discourage the employees from supporting the Union.

About January 17, 1995, the Respondent, at its Texberry Bottling Company jobsite, interrogated an employee concerning his union activities and transferred an employee from its Texberry Bottling Company jobsite to its St. Luke's Professional Building jobsite because the employee engaged in union and protected activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced

employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has promulgated, maintained and enforced an unlawful rule prohibiting employees from discussing the Union on the job, we shall order the Respondent to rescind the rule.[1]

ORDER

The National Labor Relations Board orders that the Respondent, Precision Insulation Service Co., Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their union activities or union membership.

(b) Threatening employees that it would never sign a contract with International Association of Heat & Frost Insulators & Asbestos Workers, Local Union 22, AFL–CIO if the Union were selected as bargaining representative.

(c) Threatening employees with discharge by telling them that it would put employees on 1-day jobs and then put completed on the termination slips if employees engage in union activities.

(d) Orally promulgating, maintaining, or enforcing a rule prohibiting employees from discussing the Union on the job.

(e) Threatening employees with discharge if they talk about the Union on the job.

(f) Telling employees to tell their relatives to stop talking union on the job.

(g) Threatening employees that it would close its shop if the employees selected the Union as their bargaining representative.

(h) Promising to grant employee benefits, including a 401(k) plan, if the employees would abandon the Union.

(i) Granting bonuses and raises to employees in order to discourage their support of the Union.

(j) Transferring employees because they engage in union or protected activities.

(k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful rule prohibiting employees from discussing the Union on the job.

(b) Post at its facility in Houston, Texas, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees concerning their union activities or union membership.

WE WILL NOT threaten employees that we would never sign a contract with International Association of Heat & Frost Insulators & Asbestos Workers Local Union 22, AFL–CIO if it were selected as bargaining representative.

WE WILL NOT threaten employees with discharge by telling them that we would put employees on 1-day jobs and then put completed on the termination slips if employees engage in union activities.

WE WILL NOT orally promulgate, maintain, or enforce a rule prohibiting employees from discussing the Union on the job.

WE WILL NOT threaten employees with discharge if they talk about the Union on the job.

[1] The General Counsel has not requested any affirmative remedies with respect to the 8(a)(1) transfer of an employee to a different jobsite.

Member Browning would include the Board's traditional reinstatement and make-whole remedy for the employee unlawfully transferred from one jobsite to another. She emphasizes that ''whether counsel for the General Counsel seeks a backpay remedy is immaterial since we have full authority over the remedial aspects of our decisions.'' *Schnadig Corp.*, 265 NLRB 147 (1982). She would leave to compliance such issues as the identification of the employee in question, whether the jobs are now completed, and whether the employee suffered any loss. See *Dean General Contractors*, 285 NLRB 573 (1987).

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

WE WILL NOT tell employees to tell their relatives to stop talking union on the job.

WE WILL NOT threaten employees that we would close our shop if the employees selected the Union as their bargaining representative.

WE WILL NOT promise to grant employee benefits, including a 401(k) plan if the employees would abandon the Union.

WE WILL NOT grant bonuses or raises to employees in order to discourage their support of the Union.

WE WILL NOT transfer employees because they engage in union or protected activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our rule prohibiting employees from discussing the Union on the job.

PRECISION INSULATION SERVICE CO.